

MDL 1570 PLAINTIFFS' EXECUTIVE COMMITTEES

In re: Terrorist Attacks on September 11, 2001 (S.D.N.Y.)

Plaintiffs' Executive Committee for Personal Injury and Death Claims	Plaintiffs' Executive Committee for Commercial Claims
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VIA ECF

February 27, 2024

The Honorable Sarah Netburn, U.S. Magistrate Judge
United States District Court for the S.D.N.Y.
Thurgood Marshall U.S. Courthouse, Room 430
40 Foley Square
New York, NY 10007

Re: *In Re: Terrorist Attacks on September 11, 2001*, 03 MDL 1570 (GBD) (SN)

Dear Judge Netburn:

As supplemental authority for Plaintiffs' request to unseal (ECF Nos. 9572, 9591, 9594), Plaintiffs respectfully request that this Court consider Saudi Arabia's public filing, ECF No. 9595, describing and quoting from the only two items currently in dispute, the videos filed as Exhibits 10F and 10K to Plaintiffs' factual averment.¹ By publicly disclosing the content of these materials, Saudi Arabia has waived any argument it previously proffered to keep the videos sealed.

Contradicting its opposition to immediate public access to the videos, Saudi Arabia has publicly described their content to characterize the objective evidence in a manner favorable to itself. (ECF No. 9595 at 8, 20). In doing so, Saudi Arabia (1) acknowledges that the videos are relevant and useful for the Court's consideration; and (2) uses self-serving, incomplete and misleading characterizations of the videos' content while simultaneously arguing that Plaintiffs are prohibited from public discussion of the videos' inculpatory content. ECF No. 9589 at 23 (acknowledging citing sealed materials). Saudi Arabia's unilateral disclosure of selective aspects of the MPS evidence is irreconcilable with its argument to keep the videos sealed pending the timeline for other evidence filed in connection with its motion to dismiss, and represents bad faith abuse of the protective orders to gain unfair advantage in manipulating the public's perception of the video evidence.

Saudi Arabia's conduct underscores the need for public access to the two videos. Given the parties' agreement that the videos are "relevant" and "useful" to the Court's consideration, *see Mirlis v. Greer*, 952 F.3d 51, 59 (2d Cir. 2020) (omitting quotes), absent compelling circumstances (which no

¹ The two videos are in the Court record, ECF No. 9461-3 at 2, 3; **Exhs. 10F** and **10K** to ECF Nos. 9490 and 9543, and were cited in Plaintiffs' opposition to defendants' motions to dismiss and in opposition to defendants' motion to strike. *See* ECF Nos. 9591, 9594, summarizing the parties' unsealing dispute. The videos are not subject to the FBI protective order (ECF No. 4255) because they were produced by the U.K. Metropolitan Police Services, and are not subject to the umbrella protective order because they are judicial documents (ECF No. 1900, ILM.3.).

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one has argued exist, and Saudi Arabia by its actions demonstrated *do not exist*), the public's First Amendment and common law rights entitle the public to access the videos, and any ongoing sealing would undermine public confidence in the fairness of the judiciary's assessment of the videos.

Accordingly, Plaintiffs respectfully request that the Court (1) unseal Exhibit 10F immediately; (2) grant Plaintiffs permission to file a stand-alone copy of the unsealed Exhibit 10F, so as to more readily allow public access to it without compromising other materials on the previously-filed hard drive containing Exhibit 10F; and (3) allow Plaintiffs to publicly file a stand-alone Exhibit 10K, once redacted, per the terms and reservations previously noted. *See* ECF Nos. 9591, 9594.

Respectfully submitted,

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